



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Final Disbursement
Plainwell Impoundment

REPLY TO ATTENTION OF:
SE-5J

DATE: July 1, 2010

SUBJECT: Certification of Eligible Disbursement Request (Completion of Work) - Allied Paper/Portage Creek/Kalamazoo River Superfund Site, and Request for Disbursement from Special Account (059B_05)

FROM: Sam Borries, On-Scene Coordinator
Emergency Response Branch 2 - Section 3

TO: Linda Haile, Accountant and Richard Hackley, Chief
Program Accounting and Analysis Section

Dale Meyer, Regional Comptroller
Comptroller Branch

This disbursement involves the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, Site No. 059B-05, in Allegan and Kalamazoo Counties, Michigan.¹

Between November of 2004 and January 2007, U.S. EPA, the State, other federal agencies, and Millennium Holdings, LLC and Georgia-Pacific, LLC (Respondents) participated in a facilitated mediation to resolve issues in controversy at the Site. As a result of the mediation, Respondents agreed to conduct a removal action to address the imminent and substantial endangerment to human health and the environment presented by the presence of PCB-contaminated materials in the Plainwell Impoundment Area. As a result of the mediation, U.S. EPA Region 5 agreed to request approval from U.S. EPA's Office of Site Remediation Enforcement to disburse \$1 million from the Kalamazoo River Special Account to the Respondents as partial reimbursement for the response actions to be conducted pursuant to this settlement Agreement.

The funds in the Kalamazoo River Special Account derive from settlements with Plainwell Inc. and Weyerhaeuser, two non-performing PRPs who at one time owned the Plainwell Mill, and who Region 5 currently believes, jointly account for approximately 10% of the paper-production on the Kalamazoo River. The use of the special account funds for this purpose is consistent with both U.S. EPA guidance and the Weyerhaeuser consent decree, *i.e.* to fund response work on the Kalamazoo River. Wastes from the Plainwell mill contributed to the PCBs currently located within the Plainwell

¹ Acct. info. 2009/TR2/05F/302EC7/BOC36/059B(UZ)05

Impoundment submerged sediments and floodplains. It is therefore appropriate that monies collected by U.S. EPA from settlements with former and current owners of the Plainwell mill be used to fund cleanup at this first impoundment. Region 5 received prior written approval for the disbursement on September 18, 2006.

On February 14, 2007, an Administrative Settlement Agreement and Order on Consent for Removal Action (V-W-07-C-863) (Settlement Agreement) was entered into between the U.S. Environmental Protection Agency (U.S. EPA), the State of Michigan, and Respondents pursuant to Sections 104, 106(a), 107 and 122 of CERCLA. Among other provisions in the Settlement Agreement, such as completion of the remedy, paragraph 39 of the Settlement Agreement provides for the creation of the Plainwell Impoundment Area Disbursement Special Account and the agreement to disburse funds to Respondents as partial reimbursement for performance of work under the Settlement Agreement. U.S. EPA agreed to disburse funds from the Plainwell Impoundment Area Disbursement Special Account to Respondents in accordance with the procedures and milestones for phased disbursement set forth in paragraph 39 of the Settlement Agreement.

On January 30, 2008, U.S. EPA formally modified the Settlement Agreement to reflect certain agreements made after the signing of the Settlement Agreement: (1) waste disposal locations; and (2) the amount of funding that will be reimbursed to Georgia-Pacific LLC and Millennium Holdings, LLC from U.S. EPA's special account. Paragraph 39 of the modified Settlement Agreement requires U.S. EPA to disburse funds from the Plainwell Impoundment Area Disbursement Special Account to Respondents in accordance with the following milestones:

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| 1. | U.S. EPA written notice that all Work associated with mobilization has been completed | \$200,000 of the funds in the Plainwell Impoundment Area Disbursement Special Account |
| 2. | U.S. EPA written notice that all Work associated with the first year of construction has been completed successfully | \$500,000 of the funds in the Plainwell Impoundment Area Disbursement Special Account |
| 3. | U.S. EPA Notice of Completion of the Work | \$800,000 of the funds in the Plainwell Impoundment Area Disbursement Special Account |

On June 10, 2010, U.S. EPA formalized a second modification to the Settlement Agreement to reflect certain agreements made after the signing of the Settlement Agreement: (1) Millennium Holdings, LLC (MHLLC) shall be removed as a party or respondent, and (2) all references to the term "respondents" shall be revised to "respondent", and (3) all references to Michigan Department of Environmental Quality (MDEQ) and Michigan Department of Natural Resources (MDNR) shall be replaced with Michigan Department of Natural Resources and Environment (MDNRE), and (4)

Paragraph 39b shall be revised as follows:

EPA shall disburse the funds from the Plainwell Impoundment Area Disbursement Special Account to Respondent by electronic funds transfer per the following instructions:

Bank: JP Morgan Chase
City: New York, NY
ABA#: 021-000-021
Beneficiary: Georgia Pacific Financial Management LLC
Account #: 59-50945
Reference: Kalamazoo Disbursement Fund

On March 30, 2010 U.S. EPA provided Respondent written notice that the final milestone, Notice of Completion of the Work, has been successfully completed. On April 12, 2010, U.S. EPA has received cost summary and certification for the third and final milestone. U.S. EPA has reviewed the cost summary and certification provided by the Respondent and finds them acceptable. Therefore, it is recommended that the Region make arrangements to make payment in the amount of \$800,000 from the Special Account² via wire transfer to the following account:

Bank: JP Morgan Chase
City: New York, NY
ABA#: 021-000-021
Beneficiary: Georgia Pacific Financial Management LLC
Account #: 59-50945
Reference: Kalamazoo Disbursement Fund

Please contact Sam Borries, OSC at (312) 353-8360, or Leslie Kirby-Miles, ORC, at (312) 353-9443, if you have any questions concerning the above.

² Special Account No.- 059B(UZ)05